

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JUVENTINO RODARTE,  
Plaintiff,

v.

ALAMEDA COUNTY, et al.,  
Defendants.

Case No. 14-cv-00468-KAW

**ORDER REQUIRING PLAINTIFF TO  
FILE SUR-REPLY**

On June 26, 2015, Defendants filed a motion for summary judgment, or in the alternative, partial summary judgment. The motion has been fully briefed, and having conducted a preliminary review of the parties' papers, the Court notes that Defendants raised two issues, for the first time, in their reply. Instead of considering these issues waived, the Court orders Plaintiff to submit a sur-reply of no more than eight pages that responds to the relevant arguments in Defendants' reply.

First, Plaintiff shall address why the Court should not strike, from Plaintiff's opposition, any reference or evidence that contradicts the judicial admissions found in paragraphs 18 and 19 of the complaint. (Compl. ¶ 18 ("Rodarte saw service dog's Zina's face and the knee of a person."); *id.* ¶ 19 ("Rodarte became paralyzed and frozen with fear as he concentrated on service dog Zina's face).) Second, Plaintiff shall address why his Bane Act claim can survive even though he claims to have been unresponsive and sleeping in front of the door to his apartment when Defendants deployed the service dog.

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1 Plaintiff shall file his sur-reply by no later than September 7, 2015. The hearing currently  
2 set for September 3, 2015 is continued to September 17, 2015.

3 IT IS SO ORDERED.

4 Dated: 08/31/2015

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6 KANDIS A. WESTMORE  
United States Magistrate Judge

United States District Court  
Northern District of California